

1  
2  
3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT SEATTLE

6 AECON BUILDINGS, INC.,

7 Plaintiff,

8 v.

9 ZURICH NORTH AMERICA, et al.,

10 Defendants.  
11

Case No. C07-832MJP

ORDER STRIKING AS MOOT  
CERTAIN MOTIONS FOR  
SUMMARY JUDGMENT

12 On August 4, 2008, the Court granted Plaintiff's motions for summary judgment  
13 regarding Plaintiff's claims that Defendants acted in bad faith and violated the Washington  
14 Consumer Protection Act. (Dkt. No. 208.) The Court ruled that Defendants are now estopped  
15 from denying coverage. (*Id.* at 14.) Because other motions for summary judgment remained  
16 pending, the Court directed the parties to meet and confer and provide the Court with a joint  
17 status report detailing which issues remain to be decided on summary judgment and which are  
18 now moot. The parties have filed a joint status report detailing their positions on mootness.  
19 (Dkt. No. 210.) Having considered the parties' report and the balance of the record in this case,  
20 and in an effort to use judicial resources efficiently, the Court ORDERS as follows:

21 1) Defendants' motions for summary judgment dismissal of Plaintiff's coverage claims  
22 based on lack of an "occurrence" under the policy (Dkt. Nos. 128 & 151) are DENIED AS  
23 MOOT. Because they acted in bad faith, Defendants are estopped from raising coverage  
24 defenses.

25 2) Defendants' motions for summary judgment on the issue of whether Defendants  
26 breached their duty to defend Aecon (Dkt. Nos. 81 & 91) are DENIED AS MOOT. Defendants  
27

1 premise those motions on the argument that they were never provided information showing that  
2 any “suit” between Aecon and the Quinault existed so as to trigger a defense obligation.  
3 Although that issue is analytically distinct from the issue of whether there was coverage under  
4 the policy, even if the issue were resolved in favor of Defendants, it would serve no purpose in  
5 this case. The Court has already ruled that Defendants acted in bad faith when they denied a  
6 defense and coverage and has already ruled that Defendants are estopped from denying  
7 coverage. A favorable ruling will not effect the remedy to which Plaintiff is entitled. The Court  
8 therefore will not rule on this issue.


9         3) Zurich’s motion for summary judgment to dismiss policies incepting after March 2001  
10 (Dkt. No. 145) is DENIED AS MOOT. This motion raises coverage defenses, i.e., that Aecon is  
11 not covered under certain policies because it is only covered as an additional insured until  
12 Western Partitions completed its work on the project, and Western Partitions completed its work  
13 in March 2001. Zurich also does not dispute that Aecon qualifies as an additional insured under  
14 the two Zurich policies in effect while Zurich’s named insured, Western Partitions, was actually  
15 working on the project. Because the Court has already ruled that Zurich cannot deny coverage,  
16 and because Zurich itself does not dispute that Aecon was an additional insured under two of its  
17 policies (for which it cannot otherwise deny coverage), the issue of whether later Zurich policies  
18 provide coverage is moot.

19         4) The Court will not rule at this point on Zurich’s motion for summary judgment  
20 regarding Olympic Steamship fees. (See Dkt. No. 142.) The parties should raise their arguments  
21 regarding the appropriateness of Olympic Steamship fees after all other issues in the case have  
22 been resolved, either through motion or by trial. The Court therefore STRIKES this motion  
23 without prejudice to Zurich renewing it at the end of the case.

24         5) The remaining four summary judgment motions (Dkt. Nos. 129, 132, 138, & 140) and  
25 the remaining discovery sanctions motions (Dkt. Nos. 124 & 125) are not moot and will be  
26 considered by the Court.

The clerk is directed to send copies of this order to all counsel of record. The clerk is further directed to terminate the motions that are now moot from the Court's motions calendar.

Dated: August 15<sup>th</sup>, 2008.

  
Marsha J. Pechman  
United States District Judge